

## REMARKS

Claims 1 and 18 have been amended.

The Examiner has rejected applicants' claims 1 and 18 under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim applicants' invention. In particular, the Examiner argues that the language in each of these claims which states "wherein sections of the planar body member within said planar body member extend outwardly of the plane of the planar body member" is indefinite.

In order to overcome this rejection, applicants have amended claims 1 and 18 to recite "wherein sections cut out of the planar body member at locations within the periphery of the planar body member extend outwardly of the plane of the planar body member, said sections of said planar body member imparting compliance to said compliant member." Amended claims 1 and 18, and their respective dependent claims, are thus now believed to particularly point out and distinctly claim applicants' invention in compliance with the provisions of 35 USC § 112, second paragraph.

The Examiner has further rejected claims 1-4 and 12-17 under 35 U.S.C. § 102 (b) as being anticipated by the Louis (U.S. Patent No. 4,604,331) patent. In addition, the Examiner has rejected claims 1 and 12-17 under 35 U.S.C. § 102 (b) as being anticipated by the Batawi (U.S. Patent No. 5,902,692) patent. The Examiner has additionally rejected under 35 U.S.C. § 103(a) claims 5-9 and 11 as being unpatentable over the Louis patent in view of the Franklin, et al. (U.S. Pub. No. 2002/0022382) reference and claims 18-37 as being unpatentable over the Louis patent in view of the Franklin, et al. reference and the Gionfriddo (U.S. Patent No. 4,689,280) patent. With respect to amended claims 1 and 18, and their respective dependent claims, the Examiner's rejections are respectfully traversed.

Applicants' independent claims 1 and 18 have been amended to clarify the features of the present invention. Particularly, each of claims 1 and 18 now recite a compliant member comprising "a planar body member, wherein sections cut out of the planar body member at locations within the periphery of said planar body member extend outwardly of the plane of the planar body member, said sections of said planar body member imparting compliance to said compliant member." Claims 1 and 18 have been further amended to recite that "wherein said planar body member is dimensioned such the periphery of said planar body member is within said wet seal area." Applicants' FIG. 5 and FIGS. 6A and 6B show the sections of the planar body member as cut out from the member at locations within the periphery of the planar body member. Applicants' FIG. 3 shows that the dimensions of the planar body member are such that the periphery of the planar body member is within the wet seal area when the compliant member is situated or arranged in the wet seal area. Applicants submit that the constructions of applicants' amended claims 1 and 18, and their respective dependent claims, are not taught or suggested by the cited art of record.

Looking first at the Louis patent, applicants do not agree with the Examiners' argument that the elongated, continuous channel-shaped reinforcing member 50 in the Louis patent is a planar member with sections extending from the planar member. In any case, it is evident that the reinforcing member in the Louis patent does not include sections cut out from the member at locations within the periphery of the member.

Applicants' amended claims 1 and 18, and their respective dependent claims, in reciting such features thus patentably distinguish over the Louis patent.

In the Batawi patent, the structured layer 5 extends over the length of the electrochemically active plate 2 for the gas side of a high temperature fuel cell, shown in FIG.

2. The patent mentions that the layer 5 can be a metal sheet punched to form apertures 50 and tongues 51 and 52 bent out at both sides (FIG. 3). Tongues 51 and 52 are taught to maintain electrical contact with the electrochemically active plate 2 and structure 3.

The Batawi patent does not teach or suggest that the tongues 51 and 52 impart compliance, nor does the Batawi patent teach or suggest that the fuel cell has a plate structure defining a wet seal area, said wet seal area being adjacent an electrode and current collector, and that the structured layer 5 is arrangeable in the wet seal area. However, the Examiner has argued that the “tongues (51) . . . inherently have compliance” and that applicants’ claim recitations that the compliant member is arrangeable in the wet seal area or is configured to fit in the wet seal area are recitations “of the intended use of the claimed invention.”

Applicants’ disagree with the Examiner’s contention that the tongues 51 in the Batawi patent are inherently compliant. In order for inherency to be established, the tongues 51 in the Batawi patent must necessarily be compliant. The Examiner has offered nothing from the Batawi patent to establish this, nor has the Examiner pointed to any other reference to establish it. Thus, the Examiner’s argument of inherency is misplaced

Furthermore, with respect to the Examiner’s argument that certain features in applicants’ claim 1 are an expression of intended use and do not recite structural differences, applicants have now amended claim 1 to recite that the “planar body member is dimensioned such that when said compliant member is arranged within said wet seal area the periphery of said planar body member is within said wet seal area. Amended claim 1 thus now recites structural features, i. e., that the dimensions of the planar body are such that the periphery of the planar member is within the wet seal area. It is evident that the layer 5 in the Batawi patent

has no such dimensional constraints, since a wet seal area is not discussed at all in the patent and the layer 5 is dimensioned to extend over the extent of the electrochemically active plate 2.

Based on the above, it is thus submitted that applicants' amended claim 1, and its respective dependent claims, patentably distinguish over the Batawi patent.

Turning now to the Franklin, et al. reference, applicants disagree with the Examiner's attempt to combine this reference with the Louis patent. The Franklin, et al. reference discloses an array of spring pieces used to provide electrical contact between a bipolar separator plate and a membrane electrode assembly in a PEM fuel cell. This has nothing to do with providing a compliant member for mechanical support in the wet seal area of a fuel cell, as is disclosed in the Louis patent.

However, the Examiner has not addressed the question of whether these differences in the Franklin, et al. reference and the Louis patent dictate against a person of ordinary skill in the art being motivated to modify one reference based on the other. While the Examiner has argued that applicants cannot attack the references individually, by the same token the Examiner must review the references as a whole and cannot take only so much of a reference that the Examiner believes will support the Examiner's position. Applicants submit that, based on the differences in the references, a skilled artisan would not be motivated to use an individual spring in the Franklin, et al. reference to replace the compliant member of the Louis patent.

In any case, applicants note that the individual springs in the Franklin, et al. reference are not formed as a planar body member with sections cut out of the planar body member at positions within the periphery of the planar body member. Accordingly applicants' amended claims 1 and 18, and their respective dependent claims, all of which recite such features thus

patentably distinguish over the Louis patent and the Franklin, et al. reference, even assuming that the references could be combined.

Finally, the Gionfriddo patent, like the Louis patent, the Franklin, et al. reference and the Batawi patent, also fails to teach or suggest a “a planar body member, wherein sections cut out of the planar body member at locations within the periphery of the planar body member extend outwardly of the plane of the planar body member, said sections of said planar body member imparting compliance to said compliant member, and wherein said planar body member is dimensioned such that when said compliant member is arranged within said wet seal area the periphery of said planar body member is within said wet seal area, as required in one form or another by applicants’ amended independent claim 1 and 18, and their respective dependent claims. Such claims thus patentably distinguish over all these references

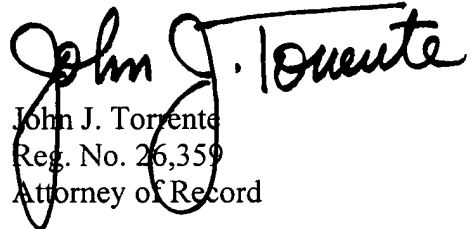
In view of the above, it is submitted that applicants’ claims, as amended, patentably distinguish over the cited art of record. Accordingly, reconsideration of the claims is respectfully requested.

If the Examiner believes that an interview would expedite consideration of this Amendment or of the application, a request is made that the Examiner telephone applicant’s counsel at (212) 790-9273.

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Respectfully submitted,

  
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